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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ANTONIO LOPEZ, individually;  
JOHANNA LOPEZ, individually; M.R.,  
by and through his guardian ad litem,  
April Rodriguez, individually and as  
successor in interest to Brandon Lopez;  
B.L. and J.L., by and through their  
guardian ad litem Rachel Perez,  
individually and as successor in interest  
to Brandon Lopez; S.L., by and through  
his guardian ad litem, Rocio Flores,  
individually and as successor in interest  
to Brandon Lopez,

Plaintiffs,

vs.

CITY OF ANAHEIM; CITY OF  
SANTA ANA; DAVID VALENTIN;  
JORGE CISNEROS; PAUL  
DELGADO; BRETT HEITMAN;  
KENNETH WEBER; CAITLIN  
PANOV; DOES 1-10,

Defendants.

Case No. 8:22-cv-1351-JVS-ADS

[Hon. James V. Selna, Dist. Judge; Hon.  
Autumn D. Spaeth, M. Judge]

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' EX PARTE MOTION  
TO MODIFY THE SCHEDULING  
ORDER**

*Filed Concurrently with Declaration of  
Abigail J.R. McLaughlin & Exhibits*

Complaint Filed: 05/07/2022

Fact DCO: 05/10/2024

Trial Date: 09/17/2024

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1 **1. INTRODUCTION & SUMMARY OF OPPOSITION.**

2 Defendants CITY OF ANAHEIM, JORGE CISNEROS, PAUL DELGADO,  
3 BRETT HEITMAN, KENNETH WEBER, and CAITLIN PANOV (collectively  
4 “Defendants”) respectfully oppose Plaintiffs ANTONIO LOPEZ and JOHANNA  
5 LOPEZ’s<sup>1</sup> (collectively “Plaintiffs”) *Ex Parte* Motion to Modify the Scheduling  
6 Order for the followings reasons.

7 First, Plaintiffs have failed to show that they were diligent in attempting to  
8 comply with this Court’s case management deadlines in this matter. Rather, Plaintiffs  
9 did not notice (or even communicate with Defendants regarding) the individual  
10 defendants’ depositions, which Plaintiffs cite as a basis for the need for a continuance.  
11 Additionally, Plaintiffs failed to show that they were diligent in seeking amendment  
12 of this Court’s scheduling order once it became apparent Plaintiffs could not comply  
13 with the order. Rather, Plaintiffs waited until less than a month prior to the fact  
14 discovery cut-off in this matter to meet and confer with Defendants about a  
15 continuance of all case management deadlines in this matter and during a time where  
16 the Parties’ counsel were all currently in a weeks-long trial in another matter (with  
17 some of Plaintiffs’ counsel), which ran from April 16, 2024 to April 30, 2024.

18 Second, Plaintiffs’ request for a continuance of all case management deadlines  
19 and trial in this matter is premature and lacks good cause because the Parties are  
20 scheduled to go to mediation on May 14, 2024. If the Parties settle this matter, there  
21 is no need for Plaintiffs’ requested relief. Moreover, if the Parties cannot reach an  
22 agreement regarding settlement, Defendants have repeatedly advised Plaintiffs that  
23 we are willing to revisit a stipulation for continuance if a good-faith mediation fails  
24 to resolve the case. But, Defendants are unwilling to agree to a stipulation to  
25

26 \_\_\_\_\_  
27 <sup>1</sup> The subject *Ex Parte* Motion was also filed on behalf of Plaintiff S.L., however  
28 S.L. has already settled their claims in this action with Defendants and S.L.’s *ex parte*  
petition to approve minor’s compromise was approved on May 7, 2024. [Dkt. 115.]

1 continuance *before* the May 14, 2024 mediation: as Defendants are entitled to a good-  
 2 faith mediation attempt to resolve this case, and Plaintiffs’ presumption of failure and  
 3 the necessity of a continuance runs contrary to the goal of good faith in settlement  
 4 negotiations – particularly after Plaintiffs previously cancelled a prior mediation after  
 5 5:00 p.m. the day prior to the mediation.

## 6 **2. RELEVANT FACTUAL AND PROCEDURAL HISTORY.**

7 On January 18, 2024, this Court granted Defendants’ Motion to Continue Case  
 8 Management Deadlines in this matter by approximately three months, citing  
 9 Defendants’ demonstration of diligence in pursuing some discovery and filing the  
 10 Motion, as well as: (1) defense counsel’s unavailability for the May 14, 2024 trial  
 11 date; (2) the additional time needed to depose the individual defendants in this matter;  
 12 and (3) to allow for another mediation between the parties and a possible settlement.  
 13 [Dkt. 110.]<sup>2</sup>

14 Defendants will have completed their fact discovery in this matter by the  
 15 current May 10, 2024 discovery cut-off , as Defendants took the deposition of Plaintiff  
 16 Antonio Lopez on January 15, 2024; served written discovery on Plaintiffs on March  
 17 4, 2024, and received responses to the same on April 29, 2024; and will be taking  
 18 Plaintiff Johanna Lopez’s deposition on May 8, 2024. [McLaughlin Decl., ¶2.]

19 \_\_\_\_\_  
 20 <sup>2</sup> It is worth noting here that, before current defense counsel substituted into the  
 21 case, a global settlement involving *all* of the plaintiffs (including the parent plaintiffs)  
 22 appeared to be within reach. However, despite repeated requests, the parent plaintiffs  
 23 have still failed to provide any numerical counteroffer to the Anaheim Defendants’  
 24 last settlement offer. [See McLaughlin Decl., ¶5, Exh. B at p. 1.] Defendants are thus  
 25 understandably skeptical of the parent plaintiffs’ interest in and commitment to a  
 26 good-faith settlement of this case: particularly when their counsel has not yet  
 27 confirmed that the parent plaintiffs themselves will be attending the scheduled May  
 28 14 mediation with mediator (Ret.) Judge Biderman; and particularly when, rather than  
 focus upon laying sufficient groundwork for a productive settlement at the upcoming  
 mediation, and possible complete resolution of the dispute, the parent plaintiffs are  
 instead focused upon the instant *ex parte* and the (untimely) “need” for further  
 discovery that would only be relevant/necessary if the May 14 mediation failed.

1 Notably, even after the discovery deadlines were extended, neither the settling  
 2 plaintiffs nor the parent plaintiffs noticed any of the depositions of the shooting-  
 3 involved Anaheim officers. [*Id.* at ¶3.]

4 Significantly, on or about March 27, 2024, the Parties (the parent plaintiffs and  
 5 the Anaheim Defendants) agreed to participate in a second mediation in this matter  
 6 before the Hon. Joseph Biderman on April 2, 2024 beginning at 10:00 a.m. [*Id.* at  
 7 ¶4.] However, after previously confirming that such mediation would proceed, on  
 8 April 1, 2024 at 5:04 p.m. (less than 24 hours prior), Plaintiffs’ counsel informed both  
 9 Defendants and Judge Biderman that they were “recently informed of a new conflict  
 10 that one of our clients has with the scheduled mediation for tomorrow and therefore  
 11 [are] not available to proceed with the mediation session.” [*Id.*, Exh. A at p. 1.]

12 Though Plaintiffs remained open to a second mediation, they did not reach out  
 13 about alternative dates until Defendants informed Plaintiffs that they would not agree  
 14 to any continuances of the case management deadlines and trial date in this matter  
 15 unless and until the mediation has been rescheduled and completed. [*Id.*, ¶5, Exh. B  
 16 at pp. 7-12.] Notably, Defendants made a pre-mediation offer to Plaintiffs prior to  
 17 the April 2, 2024 mediation, but never received a counter offer. [Exh. B at p. 1.]  
 18 While the Parties currently intend to participate in mediation with Judge Biderman on  
 19 May 14, 2024, due to Plaintiffs’ prior last-minute cancellation of the earlier mediation,  
 20 Defendants remain concerned that Plaintiffs will not attend the May 14, 2024  
 21 mediation, or will not proceed in good faith to try to resolve this issue: particularly  
 22 when, given the challenges for the parent plaintiffs to assert the claims that survived  
 23 the other plaintiffs’ settlement, the parent plaintiffs’ remaining claims appear to be of  
 24 lesser value than the settling plaintiffs. Thus, Defendants have repeatedly told  
 25 Plaintiffs that they are unwilling to stipulate to any continuance in this matter until  
 26 after the completion of a good-faith mediation as scheduled on May 14, 2024. [*See*  
 27 *generally* Exh. B, C.]

On May 7, 2024, Plaintiffs informed Defendants of their intention to bring the subject *Ex Parte* Motion to Modify Scheduling Order via phone. [McLaughlin Decl., ¶6.] However, in violation of C.D. Cal. Local Rule 7-19.1, Plaintiffs did not inform Defendants of the date they planned to file their *ex parte*. [*Id.*] Additionally, in violation of C.D. Cal. Local Rule 7-19, Plaintiffs' *Ex Parte* Motion does not contain the correct address or phone number for Defendant's counsel. [*Id.*; see Dkt. 117 at 4:16-17.] Further, in violation of this Court's policies and procedures, Plaintiffs failed to inform Defendants that any opposition to their *ex parte* is required to be filed not later than 24 hours after the filing and service of the *ex parte*. [McLaughlin Decl., ¶6; <https://www.cacd.uscourts.gov/honorable-james-v-selna> ("The moving party . . . shall notify the opposing party that any opposition must be filed not later than 24 hours after such service has been completed.") (emphasis added).]

Fortunately, Defendants are familiar with this Court's procedures, allowing them to timely file this Opposition.

### **3. PLAINTIFFS FAIL TO DEMONSTRATE THE NECESSARY DILIGENCE TO SUPPORT THEIR REQUEST FOR MODIFICATION OF THE SCHEDULING ORDER.**

"[D]istrict judges have broad discretion to manage discovery and to control the course of litigation under Federal Rule of Civil Procedure 16." *Avila v. Willits Env't Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011). In general, the pretrial scheduling order can only be modified "upon a showing of good cause." *Zivkovic S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2022) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992)); accord Fed. R. Civ. P. 16(b)(4). "The pretrial schedule may be modified 'if it cannot reasonably be met despite the diligence of the party seeking the extension,'" but "[i]f the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted." *Zivkovic*, 302 F.3d at 1087 (quoting *Johnson*, 975 F.3d at 609); see also *Eckert Cold Storage, Inc. v. Behl*, 943 F. Supp. 1230, 1233 (E.D. Cal.



1 1996) (holding that “the focus of the Rule 16 ‘good cause’ inquiry is on the moving  
2 party’s diligence, or lack thereof, in seeking amendment”).

3 Accordingly, to demonstrate diligence, the moving party is required to show:  
4 (1) that it was diligent in assisting the Court in creating a workable Rule 16 scheduling  
5 order; (2) that its noncompliance with the scheduling order’s deadline occurred or will  
6 occur notwithstanding diligent efforts to comply because of “the development of  
7 matters which could not have been reasonably foreseen or anticipated at the time of  
8 the Rule 16 scheduling conference;” and (3) that it was diligent in seeking amendment  
9 of the scheduling order once it became apparent it could not comply with the order.  
10 *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999).

11 Here, **Plaintiffs have demonstrated an utter lack of diligence in pursuing**  
12 **discovery in this matter** despite the current May 10, 2024 fact discovery cut-off.  
13 Plaintiffs state that they have “been diligently pursuing discovery in this case,”  
14 including “propound[ing] significant written discovery.” [Dkt. 117 at 6:26-7:1.] Yet,  
15 Plaintiffs’ last written discovery to Defendants was served on November 17, 2023,  
16 prior to the Court’s Order extending the case management deadlines in this matter per  
17 Defendants’ request. Additionally, Plaintiffs have utterly failed to notice or  
18 communicate with Defendants about the depositions of the individual defendant  
19 officers in this matter, despite being on notice of the approaching May 10, 2024 fact  
20 discovery cut-off; this is especially true given the Defendants’ scheduling of Plaintiff  
21 Johanna Lopez’s deposition on May 8, 2024. [See McLaughlin Decl., ¶¶3, 7, Exh. D.]

22 Moreover, Plaintiffs’ counsel were aware of both Parties’ counsel’s trial  
23 conflict from April 16, 2024 to April 30, 2024 (for the *Nunis* trial involving most of  
24 the same counsel) since on or about July 13, 2023. [McLaughlin Decl., ¶8.] Thus,  
25 when the Court granted Defendants’ request for continuance on January 18, 2024,  
26 Plaintiffs’ counsel, like Defendants’ counsel, were well-aware of the immovable  
27 scheduling conflict created by this trial (*Nunis*) and could have reached out about the  
28

1 individual defendants' depositions at any point in the approximately three (3) months  
2 preceding that conflict; and yet, Plaintiffs did not do so. [*See id.*, ¶3.]

3 Additionally, Plaintiffs attempt to blame Defendants for their need to bring the  
4 subject *ex parte*. However, it is clear that it is Plaintiffs' own lack of diligence that is  
5 to blame. Plaintiffs claim that they sought a stipulation to continue the case  
6 management deadlines in this matter to avoid the additional costs of depositions and  
7 retaining experts. Yet, as stated above, Defendants have completed their fact  
8 discovery in this matter and the Parties' expert disclosures are not due until after the  
9 May 14, 2024 mediation. Thus, if the Parties come to a settlement on May 14, the  
10 need for *any* discovery would be mooted. Additionally, as stated by Defendants, once  
11 mediation occurs, Defendants are willing to revisit a continuance of case management  
12 deadlines in this matter, which would necessarily include the expert disclosure  
13 deadline. [*See* Dkt. 110 (setting initial disclosure of experts as "not later than May  
14 17, 2024").]

15 Significantly, Plaintiffs' lack of diligence also applies to Plaintiffs' last-minute  
16 *ex parte* regarding this matter. Plaintiffs attempt to blame Defendants for a change in  
17 position. Yet, Defendants repeatedly told Plaintiffs their concerns about any  
18 continuance in light of the lack of re-scheduling the second mediation in this matter.  
19 [*See generally* Exh. B, C.] Furthermore, Plaintiffs waited until the Parties' trial  
20 counsel were in the middle of another trial (*Nunis*) to request that Defendants stipulate  
21 to a continuance. [*See* Dkt. 117 at 1:22-2:8.] As discussed above, Plaintiffs' counsel  
22 knew that the Parties' counsel was in trial (Mr. Sain, Ms. Bakken, Mr. Lacy, Ms.  
23 Andrews, and Ms. Quesada were all in trial together in San Diego for about 3 weeks)  
24 and Plaintiffs could have reached out about a continuance and/or filed the appropriate  
25 motion to obtain the continuance Plaintiffs now desire at a time that did not conflict  
26 with that other matter (*Nunis*); and yet Plaintiffs did not do so. Instead, Plaintiffs  
27 waited until three (3) days before the fact discovery cut-off in this matter to seek such  
28 a continuance.



1 Accordingly, Plaintiffs’ alleged need to continue the case management  
 2 deadlines in this matter is created solely through their lack of diligence; and thus the  
 3 Court should deny Plaintiffs’ *ex parte* in its entirety for lack of diligence/good cause.

4 **4. PLAINTIFFS’ REQUEST FOR CONTINUANCE OF THE CASE**  
 5 **MANAGEMENT DEADLINES AND TRIAL IN THIS MATTER IS**  
 6 **PREMATURE & LACKS GOOD CAUSE.**

7 As stated above, the Parties are scheduled to attend mediation in this matter on  
 8 May 14, 2024. Due to Plaintiffs’ prior last-minute cancellation of mediation,  
 9 Defendants are rightfully concerned about Plaintiffs repeating this same evasion of  
 10 good-faith settlement after obtaining their requested continuance of all case  
 11 management deadlines and the trial date in this matter. If Defendants stipulated to  
 12 Plaintiffs’ requested continuance prior to the Parties completing in good faith the May  
 13 14, 2024 mediation and then Plaintiffs again cancelled such mediation, such  
 14 stipulation would effectively reward Plaintiffs for their lack of diligence in discovery  
 15 in this matter while providing no benefit to Defendants; who, as discussed, are in  
 16 compliance with the Court’s current case management deadlines.

17 If the Parties are able to reach a settlement on May 14, then Plaintiffs’ request  
 18 for continuance of the case management deadlines in this matter is mooted. If the  
 19 Parties are not able to reach a settlement, Defendants are willing to revisit a stipulation  
 20 for a continuance of all case management deadlines and trial in this matter in that  
 21 unlikely event. As a result, there is no prejudice to Plaintiffs if the subject *ex parte*  
 22 is denied. Plaintiffs’ purported “urgency” is of their own making and there is thus no  
 23 good cause basis for the Court to grant the extraordinary relief requested at this time.

24 Indeed, the moving plaintiffs utterly fail to show why their requested relief  
 25 would result in undue prejudice absent hearing shorter than a noticed motion. Surely,  
 26 if the May 14 mediation fails, Plaintiffs could then bring a regularly-noticed motion  
 27 seeking leave to “reopen” discovery and push out all of the related deadlines. When  
 28 mediation on May 14 may very well completely resolve the case – assuming the

parent plaintiffs are in attendance and all parties enter such mediation in a good faith attempt to resolve the dispute – Plaintiffs cannot establish the requisite good cause, and/or irreparable prejudice, which is a threshold requirement for establishing the necessity of ex parte relief. *Cervantes v. Zimmerman*, 2020 U.S. Dist. LEXIS 1498 at \*3 (S.D. Cal., Jan. 6, 2020) (citing *in re Intermagnetics America, Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989)).

For the foregoing reasons, Plaintiffs’ *ex parte* should be denied for lack of good cause.

**5. CONCLUSION.**

Based on the foregoing, Defendants respectfully request that Plaintiffs’ *Ex Parte* Motion to Modify the Scheduling Order be denied *in its entirety*.

DATED: May 7, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Abigail J.R. McLaughlin

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**FEDERAL COURT PROOF OF SERVICE**  
LOPEZ, ANTONIO, et al. v. CITY OF ANAHEIM, et al.  
Case No. 8:22-cv-1351

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On May 8, 2024, I served the following document(s): DEFENDANTS' OPPOSITION TO PLAINTIFFS' EX PARTE MOTION TO MODIFY THE SCHEDULING ORDER

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

**SEE ATTACHED SERVICE LIST**

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on May 8, 2024, at Los Angeles, California.

/s/ Abigail J. R. McLaughlin  
Abigail J. R. McLaughlin

**SERVICE LIST**  
**LOPEZ, ANTONIO, et al. v. CITY OF ANAHEIM, et al.**  
**Case No. 8:22-cv-1351**

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